

STATE OF MICHIGAN
COURT OF APPEALS

ARNO HASSLER and VIRGINIA HASSLER,

Plaintiff-Appellants,

v

MOORE & CARTER LUMBER REAL ESTATE
COMPANY,

Defendant-Appellee.

UNPUBLISHED
February 26, 2008

No. 276019
Sanilac Circuit Court
LC No. 06-031098-CK

Before: Whitbeck, P.J., and Jansen and Davis, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(8) and (10). On appeal, plaintiffs argue the trial court erred by dismissing their complaint based on res judicata. We affirm. This case has been decided without oral argument under MCR 7.214(E).

“Res judicata bars a subsequent action between the same parties when the facts or evidence essential to the action are identical to those essential to a prior action.” *Chestonia Twp v Star Twp*, 266 Mich App 423, 429; 702 NW2d 631 (2005). Also, “the doctrine bars a second, subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first.” *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 418; 733 NW2d 755 (2007) (citations omitted).

In this case, the parties in both the prior suit and the present suit are the same, and the prior action was decided on the merits. So, the critical issue on appeal is whether the matter in the second case was decided in the first case. The trial court determined it was. We agree.

Plaintiffs acknowledge in their brief on appeal that the 60-day issue was raised in both cases. Plaintiffs’ brief states the following:

Moore & Carter Lumber Real Estate Company filed a Motion to Enforce Judgment on May 16, 2006 in the companion case 04-30125 CK. The Hasslers argued that it had failed to close within 60 days of the Court granting specific performance. At which time, the Hasslers filed a declaratory action seeking the determination that Moore & Carter Lumber Real Estate Company abandoned the

option for *failure to close within 60 days*. The trial court ordered the Hasslers to execute all necessary documents within 14 days. [Emphasis added.]

The trial court resolved the 60-day issue after the June 1, 2006 motion to enforce the judgment was filed by defendant. The court entered an order to enforce the prior judgment and gave plaintiffs 14 days to execute all the documents necessary to convey the property to defendant. Therefore, because the 60-day issue was litigated in the first action and the trial court issued an order resolving the matter, res judicata barred plaintiffs' attempt to litigate the same matter again in this suit.

Plaintiffs cite *In re Raseman Estate*, 18 Mich App 91; 170 NW2d 503 (1969), as support for their position. However, the facts and circumstances of *Raseman* are different from the instant case. In *Raseman*, the family was seeking to modify an order, *id.* at 104, which meant the matter could not have been a part of the original litigation. Unlike in *Raseman*, plaintiffs in this case previously litigated the 60-day issue before the trial court in the post-judgment motion in the prior case and the trial court resolved the matter in its July 17, 2006 order. The facts and circumstances in *Raseman* had changed and that was why the family was seeking to modify the court order. In the instant case, there was no change – the 60-day argument had already been made and the trial court had issued an order.

Affirmed.

/s/ William C. Whitbeck

/s/ Kathleen Jansen

/s/ Alton T. Davis